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FISCAL IMPACT STATEMENT

LS 7008

BILL NUMBER: SB 392

NOTE PREPARED: Jan 1, 2011

BILL AMENDED:

SUBJECT: Expungement.

FIRST AUTHOR: Sen. Taylor

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Expungement Petitions* – It provides additional situations in which a court may expunge arrest records, and establishes certain procedures concerning expungement.
- B. *Release of Limited Criminal History Records* – It provides that law enforcement agencies may not release a limited criminal history to noncriminal justice agencies if certain petitions are filed.
- C. *Class B Misdemeanor* – It provides that it is a Class B misdemeanor if an employee of a law enforcement agency violates the expungement of arrest records laws.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Release of Limited Criminal History Records* – The Indiana State Police (ISP) maintains the criminal history data base. ISP may need additional staff and other resources depending on the requests that criminal defendants file for expungement because criminal charges filed against them have been dismissed. During CY 2009, there were 59,136 criminal charges dismissed in Indiana's trial courts; the number of cases in which the defendant was acquitted of a charge is not known. If the courts order the expungement of all 59,000 criminal cases, the number of judicial orders per year would be 1,137 petitions per week, or 227 each day. Defendants in criminal cases from years prior to 2009 might also petition for expungement as well.

Background Information: A person may petition ISP to limit access to an individual's limited criminal history information to criminal justice agencies if more than 15 years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a

crime. Exceptions include individuals who wish to volunteer services involving children under the discretion of a social services agency or nonprofit corporation, or if the individual is being sought by the parent locator service of the Child Support Bureau in the Department of Child Services. (IC 35-38-5-5) [Note: As proposed, this provision would also require local law enforcement agencies to limit access if these persons petition the State Police and the petition is granted.]

ISP reports the number of requests to limit access to criminal history files over the past three years in the table below.

Requests to Limit Access to Limited Criminal History Files Maintained by Indiana State Police by Calendar Year			
	2008	2009	2010 (Nov. 2010)
Requests for Limiting Access of Records	79	74	80
Requests Denied	4	10	21
No Action: ISP doesn't hold record	4	8	22

No information was available about the number of criminal charges that had been vacated or findings of guilt set aside. Additionally, it is not known how many individuals would qualify for record expungement under the provisions of the legislation. Expungement would eliminate access to criminal history files to noncriminal justice agencies (i.e., companies that specialize in background checks).

Explanation of State Revenues: *Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class B misdemeanor is \$1,000. However, any additional revenue would likely be small.

Explanation of Local Expenditures: *Expungement Petitions* – Under current law, an individual may petition a court to expunge arrest records if: (1) no criminal charges are filed or (2) charges were dropped due to mistaken identity, no offense was committed, or because no probable cause existed. If the arrest is expunged, no information about the arrest can be placed or retained in any criminal history repository at the state, regional, or local level. (IC 35-38-5-1)

This bill adds the following conditions for when a court with criminal jurisdiction is required to automatically order expungement of arrest records for cases going forward:

1. If all criminal charges filed are dismissed for any reason
2. If the individual is found not guilty
3. If a subsequent conviction is reversed or vacated on appeal
4. If a charge, arrest, or conviction appears on an individual's criminal history because of theft, deception, or mistake.

For past cases, this bill would also require the court to hold hearings and order expungement of criminal records:

1. If all criminal charges filed are dismissed for any reason (other than for mistaken identity, no offense being committed, or because of absence of probable cause)

2. If the individual is found not guilty
3. If a subsequent conviction is reversed or vacated on appeal
4. If a charge, arrest or conviction appears on an individual's criminal history because of theft, deception, or mistake.

Depending on the circumstances, this bill would add to the workload of prosecuting attorneys and local law enforcement agencies if more individuals petition the courts to hold expungement hearings for past cases.

Any added workload will likely be distributed to trial courts unevenly and will depend on each county's current number of judicial officers and staff and the current number of criminal cases that are dismissed.

The following table illustrates the added workload that courts would have if defendants in criminal cases that were dismissed only in CY 2009 file for expungement. In CY 2009, trial courts in Indiana dismissed 59,136 criminal cases filed by prosecuting attorneys. Sixty-five counties would have fewer than four cases each week. The number of persons who are acquitted is not included in this table. However, national statistics suggest that this number is likely to be negligible. Defendants in criminal cases from years prior to 2009 may also wish to file for expungement as well.

Added Workload for Counties From New Orders for Expungement								
Added cases to be filed	Less than 1 each week	Between 1 and 2 each week	Between 2 and 4	Between 4 and 7	Between 7 and 10	Between 10 and 20	Between 20 and 145	More than 145
# of counties	20	27	18	9	8	5	4	1

Release of Limited Criminal History Records – (see *Explanation of State Expenditures*) This bill would also affect local law enforcement agencies if persons file for expungement and restricted release of limited criminal history and the State Police grant the petition..

Explanation of Local Revenues: *Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail.

State Agencies Affected: Indiana State Police.

Local Agencies Affected: Trial courts and city and town courts; Local law enforcement agencies.

Information Sources: Captain Sherry Beck, Indiana State Police; *2009 Indiana Judicial Report*; Bureau of Justice Statistics Bulletin: "Felony Defendants in Large Urban Counties, 2006".

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